

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-6783

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

STANLEY HOBEREK,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia, at Wheeling. Frederick P. Stamp, Jr., District Judge. (CR-99-13, CA-00-184-5)

Submitted: July 25, 2002

Decided: August 2, 2002

Before WILKINS, MOTZ, and TRAXLER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Stanley Hoberek, Appellant Pro Se. Robert H. McWilliams, Jr., Assistant United States Attorney, Wheeling, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Stanley Hoberek seeks to appeal the district court's order dismissing his motion filed under 28 U.S.C.A. § 2255 (West Supp. 2002). Appellant's case was referred to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) (1994). The magistrate judge recommended that relief be denied and advised Appellant that failure to file timely objections to this recommendation could waive appellate review of a district court order based upon the recommendation. Appellant raised one objection to the magistrate judge's report, and challenged the recommendation of dismissal of his claim based upon Apprendi v. New Jersey, 530 U.S. 466 (2000). However, despite the warning, Appellant failed to object to the magistrate judge's recommendation on the remaining claims.

The timely filing of objections to a magistrate judge's recommendation is necessary to preserve appellate review of the substance of that recommendation when the parties have been warned that failure to object will waive appellate review. See Wright v. Collins, 766 F.2d 841, 845-46 (4th Cir. 1985); see also Thomas v. Arn, 474 U.S. 140 (1985). Appellant has waived appellate review of the remaining non-Apprendi claims by failing to file objections after receiving proper notice. We dismiss the appeal as to the Apprendi claim based upon the reasoning of the district court. United States v. Hoberek, Nos. CR-99-13; CA-00-184-5 (N.D.W. Va. Apr. 11, 2002). We accordingly deny a certificate of appealability

and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED